

REPORT IN BRIEF

Review of Certain Montgomery County Ethics Activities

APRIL 9, 2012

BACKGROUND

Montgomery County has enacted a Public Ethics Law applicable to its elected officials, public employees, and members of Boards, Commissions, and Agencies. This Law also sets criteria for private individuals who seek to influence the actions of the County.

WHY WE DID THIS REVIEW

The Inspector General, Deputy Inspector General, and Assistant Inspector General each had difficulty accessing the County's Financial Disclosure System to complete an initial financial disclosure, and became concerned following a July 15, 2011 meeting, in which the newly appointed Ethics Commission Staff Director/Chief Counsel acknowledged problems with the process, and suggested that the Office of Inspector General conduct an independent review.

The objectives of our review were to determine whether a.) required procedures are documented and in compliance with State of Maryland and Montgomery County Codes, and b.) implemented procedures and internal controls are consistent with required procedures.

WHAT WE FOUND

We found widespread noncompliance with financial disclosure filing deadlines, due to poor communications, poor coordination among County departments and systems, and enforcement shortcomings.

86% of the initial financial disclosure reports we tested were not submitted within the statutory deadline of 15 days after commencing service with the County. 29% of all 2010 annual financial disclosure reports were submitted after the extended deadline of May 15, 2011, and 4% had not been submitted as of January 17, 2012 - the date of our final testing. 30% of the final disclosure reports we tested were filed after the last day of employment - the statutory deadline.

There is no overarching entity within Montgomery County Government that has the authority, accountability, and control to ensure that the financial disclosure reporting process operates in accordance with the Public Ethics Law. For example, hiring departments must submit timely notices of employment changes, department managers must ensure their staff submit timely disclosures, and other departments must correct system interface errors.

We found that the financial disclosure system (FDS) does not provide adequate follow-up notifications to filers and reviewing managers.

We observed that a significant number of initial and final financial disclosure reporting delinquencies resulted from filers' inability to access the FDS, precluding them from timely, on-line disclosure submission.

We found that the County does not enforce the Public Ethics Law's mandatory and discretionary penalties for delinquent filers and non-filers.

We found that the Ethics Commission office has not put its many manual procedures in writing, which is an operating risk, given the office has only two staff members.

WHAT WE RECOMMEND

To effectively implement the Public Ethics Law, the causes that contribute to delay in completing Financial Disclosure forms must be addressed. We recommend that the County Executive and Council work with the Ethics Commission Staff Director/Chief Counsel to ensure authority, accountability, and control for the logistical operation and enforcement of the financial disclosure filing process is clearly designated. Steps should be undertaken to modify the design of the ERP/FDS interface that routinely transfers data from the County's human resources systems to its financial disclosure system in order to eliminate any manual re-entry of data. The process to identify, approve, and distribute notifications to individuals subject to annual financial disclosure reporting should be modified to eliminate operational delays that now exist. The assignment of system access privileges should be modified to eliminate delays for initial filers to gain access to the disclosure system. An alternative, manual financial disclosure process should be developed as a fail-safe back up to the current on-line system.

The Ethics Commission should reduce manual processing workloads by streamlining procedures, and further automating its financial disclosure, lobbyist registration, and outside employment systems.

Review of Certain Montgomery County Ethics Activities

April 9, 2012

Introduction

We reviewed the Montgomery County Ethics Commission's financial disclosure, lobbyist registration, and outside employment reporting and tracking activities for the period January 1, 2010 through January 17, 2012. The objectives of this review were to determine whether:

- Required procedures are documented and in compliance with State of Maryland and Montgomery County Codes, and
- Implemented procedures and internal controls are consistent with required procedures.

In addition to its financial disclosure, lobbyist registration, and outside employment reporting and enforcement responsibilities, the Ethics Commission is to provide ethics education for County officials and employees. We did not review the Ethics Commission's educational, lobbyist registration and reporting, training, enforcement, or interpretation activities.¹

Our review was conducted between August 2011 and February 2012 in accordance with the inspection standards contained in the *Quality Standards for Inspection and Evaluation*, issued by the Council of the Inspectors General on Integrity and Efficiency (January 2011).

Background

The Ethics Commission administers the Montgomery County Public Ethics Law² (Public Ethics Law) by encouraging and enforcing compliance and ensuring the ethical conduct of public officials and employees of the Executive Branch, the Legislative Branch, and certain Boards and Commissions,³ the Revenue Authority, the Housing Opportunities Commission, Fire Corporations, and Rescue Squads.

¹ The Ethics Commission conducts other activities described under the heading "Ethics Commission Activities" found elsewhere in this report. While we observed internal control concerns relating to lobbyist registration and reporting activities, we noted the recently appointed Staff Director/Chief Counsel of the Ethics Commission was making changes to the lobbyist processes. As a result, we modified the scope of our audit to defer review at this time.

² Montgomery County Code, Chapter 19A.

³ Montgomery County Code, Chapter 19A identifies the board and commission members subject to the Ethics Law.

The Maryland Public Ethics Law⁴ requires that each county enact provisions governing the public ethics of local officials relating to conflicts of interest, financial disclosure, and lobbying that are substantially similar to those of the State.

The Charter of Montgomery County, Maryland directs the County Council to adopt a code of ethics that, at minimum, regulates (a) conflicts of interest; (b) solicitation and receipt of gifts; (c) other employment of present and former public employees; (d) lobbying; (e) financial disclosure by public employees; (f) the use of County property and County insignia; and (g) the use of the prestige of office.⁵ The Charter further provides that the Council may, by law, establish a commission to enforce and interpret the code of ethics and related laws. The County's Public Ethics Law is contained in Chapter 19A of the Montgomery County Code.

Ethics Commission Membership

As the Charter permits, a Montgomery County Ethics Commission (Commission) was established through Montgomery County Code.⁶ The mission of the Ethics Commission is "to promote the public's trust of County government through the independent administration, including enforcement, of laws designed to ensure the impartiality of County employees, including elected officials, in the execution of their responsibilities."⁷

The Ethics Commission is comprised of five uncompensated, volunteer members who are appointed by the County Executive and confirmed by the County Council.⁸ The Ethics Commission currently has four serving members. The fifth commissioner post was vacated when the former commissioner changed residence to a location outside the County - an event that by code disqualifies eligibility. As of the date of this report, the Chairperson of the Ethics Commission is Nina Weisbroth, and the Vice Chairperson is Stuart Rick. The Ethics Commission members are:

<u>Commissioner</u>	<u>Year Appointed</u>	<u>Term Expires</u>	<u>Term</u>	<u>Office</u>
Nina A. Weisbroth	2009	2013	2 nd	Chair
Kenita V. Barrow	2010	2011 ⁹	1 st	
Antar C. Johnson	2007	2011 ¹⁰	2 nd	
Stuart D. Rick	2009	2013	2 nd	Vice Chair

⁴ Maryland Code Annotated, State Government Article, § 15-803 allows modification by the county to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in the County.

⁵ Montgomery County Charter, § 410.

⁶ Montgomery County Code, § 19A-5(a).

⁷ "Mission Statement", Ethics Commission Proposed FY2013 Departmental Budget.

⁸ Montgomery County Code, § 19A-5(a).

⁹ Commissioner Kenita Barrows's term ended in October, 2011. She continues to serve pursuant to a six-month term extension provided for by Montgomery County Code, § 2-148(a)(4).

¹⁰ Commissioner Antar Johnson's term ended in October, 2011. He continues to serve pursuant to a six-month term extension provided for by Montgomery County Code, § 2-148(a)(4).

Funding

The Public Ethics Law provides for staff, separate office space, equipment, and supplies to carry out the activities of the Ethics Commission. This administrative support is funded through the Ethics Commission's annual appropriation.

The Ethics Commission fiscal year 2012 Operating Budget is \$191,430, representing a 29.7 percent decrease from the fiscal year 2010 final budget of \$272,390. Personnel costs comprise 96.5% of the budget, funding two full-time positions. Operating expenses account for the remaining 3.5% of the fiscal year 2012 budget.

Ethics Commission Staffing

Before Montgomery County Expedited Bill 37-10, "Ethics - Ethics Commission Staff" amended Chapter 19A in July 2010, the Ethics Commission's administrative activities were overseen by an Executive Director.¹¹ Under this arrangement, the Ethics Commission extensively used the County Attorney's office to fulfill the legal, investigative, and adjudicatory duties of the Ethics Commission. Bill 37-10 replaced the role of Executive Director with a Staff Director/Chief Counsel. The Bill authorized the Ethics Commission, rather than the County's Chief Administrative Officer, to appoint and remove the Ethics Commission's Staff Director/Chief Counsel. The Ethics Commission appointed Robert W. Cobb, an attorney licensed to practice law in Maryland, to serve as Staff Director/Chief Counsel beginning July 2011. Mr. Cobb replaced Barbara McNally, who had served as Executive Director of the Ethics Commission for more than 25 years. Mr. Cobb is assisted by one Ethics Commission Program Specialist.

Ethics Commission Activities

Compliance with the Public Ethics Law is achieved through the following Ethics Commission activities:

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| Financial Disclosure: | The Public Ethics Law requires specific public officials and employees to disclose financial information to avoid potential conflicts of interest. |
| Lobbyist Registration: | The Public Ethics Law requires lobbyists to register and report lobbying activities involving the County government when income or expenditures exceed \$500. ¹² |
| Outside Employment: | The Public Ethics Law requires employees and officials to obtain approval from the Ethics Commission to be engaged in outside employment. |
| Investigations: | The Public Ethics Law further authorizes and empowers the Ethics Commission to investigate any matter it believes to be a violation of the law. ¹³ The Ethics Commission's Staff Director/Chief Counsel has chosen |

¹¹ Montgomery County Council Expedited Bill No. 37-10, effective July 29, 2010.

¹² A person representing an organization that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code is subject to different rules. See Montgomery County Code § 19A-21(c)(8).

¹³ Montgomery County Code, § 19A-9(a).

to serve in the role of adjudicatory counsel to the Commission during investigative hearings. The Public Ethics Law provides the Ethics Commission with the following options to secure assistance in conducting the investigation: the County Attorney's Office, special counsel, or other person temporarily retained by the Commission.¹⁴ Additionally, the Commission may ask the Inspector General to investigate any matter within the Inspector General's or the Commission's jurisdiction.¹⁵

Other Activities:

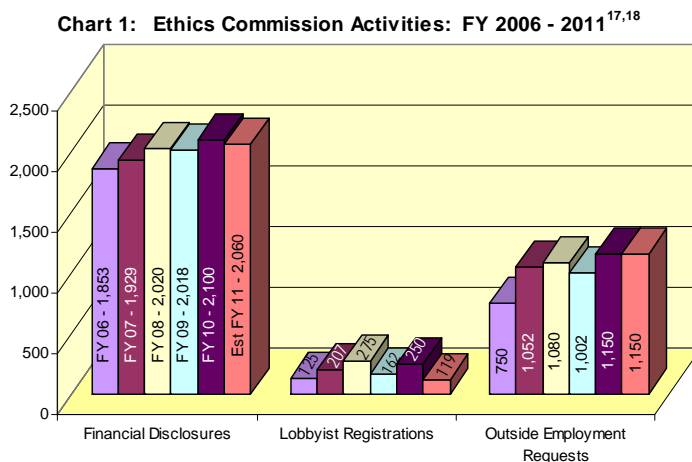
The Public Ethics Law further authorizes and empowers the Ethics Commission to impose sanctions, and it requires the Ethics Commission to act on a complaint filed by any individual alleging any violation of the ethics law, consider and rule upon a request for a waiver of the law's prohibitions, and, when requested and as appropriate for the Ethics Commission, issue an advisory opinion on the meaning of the law's provisions.¹⁶

Education:

The Ethics Commission provides ethics education and training for County officials and employees and provides computer access to all reporting forms required under the Public Ethics Law.

Levels of Activity and Records

The Ethics Commission reports performance measures in its annual operating budget. For fiscal year 2011, the Commission projected it would process 2,060 financial disclosures, 350 lobbyist registrations, 200 lobbyist activity reports, and 1,150 requests for outside employment. These



activities substantially mirrored those for fiscal year 2010, and were projected in the FY12 budget to remain at the same levels for fiscal year 2012.¹⁷ Chart 1 illustrates the Ethics Commission's activity from fiscal years 2006 through 2011. The Ethics Commission Staff Director/Chief Counsel voiced disagreement with the accuracy of these previously reported lobbyist registration activity levels, stating the

¹⁴ Montgomery County Code, § 19A-9(b).

¹⁵ Montgomery County Code, § 19A-6(e).

¹⁶ Montgomery County Code, § 19A-6(b) contains these and other duties.

¹⁷ Performance levels for 2011-2012 are projected. Performance levels for periods before 2011 were reported as actual.

reported levels exceed the actual activity.¹⁸ In fiscal year 2011, the Ethics Commission projects that it will review and approve 3 waiver requests and investigate 7 complaints. From fiscal year 2010 to fiscal year 2011, the number of days to process routine requests increased from 35 to 40 (14 percent), and the number of training sessions conducted by staff decreased by 6 percent from 85 to 80.¹⁹

Determination of Individuals Subject to Financial Disclosure

To assist in monitoring the ethical conduct of public officials and employees serving in County government, the Public Ethics Law requires individuals in designated positions to file financial disclosure reports with the Ethics Commission. As Chart 1 illustrates, this reporting represents a significant level of activity for the Ethics Commission.

The law specifically identifies functional positions whose incumbents must file publicly available financial disclosure statements under oath.²⁰ The law also provides for incumbents in other specified positions to submit public disclosures that are limited to information concerning economic interests that may create a conflict between the employee's personal interests and official duties.

Generally, public disclosures are required from individuals who have the authority to direct the actions of County government (such as the incumbents and candidates for County Executive and County Council, Board and Commission members, and executive and departmental director level managers in the Executive and Legislative branches). While these financial disclosures are reviewed and approved by an individual within the County government, the Public Ethics Law envisions that public scrutiny of these reports will help to promote trust and confidence.

Although not required by the Maryland Public Ethics Law, the Montgomery County law requires certain individuals to file confidential financial disclosure statements. The Montgomery County Public Ethics Law specifies certain positions whose incumbents must file a confidential disclosure, and further provides that the County Executive and Council may designate any additional public employee in the Executive or Legislative branch, respectively, to file a confidential disclosure after finding that filing a statement will promote trust and confidence in County government. The Public Ethics Law envisions that the review and approval of confidential financial disclosures by a department director will help avert conflicts of interest.

¹⁸ We reviewed the 2011 report of lobbyist registrations published by the Ethics Commission on January 26, 2012 – five days after our last data test. We observed that the registration report listed 119 registrants.

¹⁹ “Department Performance Measures”, Ethics Commission Approved Departmental Budget, “FY12 Approved Operating Budget and FY12-17 Public Services Program”, Montgomery County Maryland, Office of Management and Budget, July 2011. Also see OMB-published budgets for FY09 through FY11.

²⁰ Montgomery County Code, § 19A-17.

Appendix D is the statutory provision of the Public Ethics Law that details the positions required to file a financial disclosure.

Individuals required to submit financial disclosures pursuant to the designation of the Executive or Council are initially identified when the position is established. The designation process is coordinated among the hiring manager, the Office of Human Resources (OHR), and the County Attorney's Office. Once identified, positions and named individuals subject to financial disclosure are reconfirmed annually via review and approval of the Executive and Council.

Review Methodology

We describe our review methodology in Appendix A and detailed test results in Appendix E.

Findings and Recommendations

Finding 1 - Financial Disclosure Business Process Ownership: In general, our test results show widespread late filing and frequent non-filing of the financial disclosure reports the Public Ethics Law requires of employees, and board and commission members. Yet there is no overarching entity within Montgomery County Government that has the authority, accountability, and control necessary to ensure that the financial disclosure reporting process operates as anticipated by the Public Ethics Law.

The Montgomery County Public Ethics Law (Public Ethics Law) requires that the Ethics Commission develop and make available the various financial disclosure forms. The law requires the Commission to provide a repository for the disclosure reports that are filed by public officials and employees. The law also requires that the Commission act on a complaint, and respond to requests for a waiver or an opinion relating to a financial disclosure.²¹

The effective deployment, operation, and enforcement of financial disclosure activities, however, reside outside the Commission's sphere of influence. The Public Ethics Law does not assign responsibility to implement and manage the deployment and logistical operation of the financial disclosure requirements of the law to any department, governmental branch, or commission. Successful logistical operation of this activity requires significant involvement of Executive branch departments, especially with respect to coordination with the Office of Human Resources (OHR) and its systems. Currently, the Ethics Commission is responsible for the results of this process, but lacks the authority and accountability to ensure its effective operation. Most of the

²¹ Montgomery County Code, § 19A-6(b).

financial disclosure reporting weaknesses identified in this report are technical findings that arise from an absence of clearly delineated authority, accountability, and control for the financial disclosure process.

We observed a lack of departmental coordination and effective focus on the logistical operation of the financial disclosure reporting process. We found that 86 percent of the initial financial disclosure reports we tested were not submitted within the statutory deadline of 15 days after commencing service with the County. 29 percent of all 2010 annual financial disclosure reports were submitted after the extended deadline of May 15, 2011, and 4 percent had not been submitted as of January 17, 2012 - the date of our final testing. 30 percent of the final disclosure reports we tested were filed after the last day of employment – the statutory deadline.

A majority of financial disclosure logistical and operational processes originates in, is the result of, or is supported by activities of departments within the Executive Branch. Recommendations made in this report for changes to the financial disclosure logistical operations and enforcement affect hiring departments, the Office of Human Resources (OHR), the Department of Technology Services (DTS), and modifications to County computer systems (FDS, ERP, HCM, and PTS²²). The Ethics Commission is not in a position to effect changes in any of these areas.

Recommendation 1: Financial Disclosure Business Process Ownership

The County Executive and Council should work with the Ethics Commission Staff Director/Chief Counsel to ensure that authority, accountability, and control for the logistical operation and enforcement of the financial disclosure filing process are clearly delegated. It is further recommended that a staff member be designated within each of the Executive and Legislative branches and Boards, Committees, and Commissions to be responsible for ensuring compliance with the financial disclosure filing requirements of the Public Ethics Law.

Finding 2 - Initial Financial Disclosure: Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit an initial financial disclosure report by established deadlines. Public employees and officials routinely submit financial disclosure reports later than the required 15 days following start of employment in a new role with the County.

The Public Ethics law requires that persons in positions identified to file financial disclosure reports must file an initial disclosure statement within 15 calendar days after starting in a new

²² Financial Disclosure System (FDS), Enterprise Resource Planning (ERP) system, Human Capital Management (HCM) system, and Position Tracking System (PTS).

position (due to hire or transfer).²³ The requirement applies to individuals who are serving in their first position with the County and existing employees who transfer into a position subject to reporting requirements.

The Ethics Commission provides an automated Financial Disclosure System (FDS) to solicit, monitor, and retain financial information disclosed by specific public officials and employees. In order to meet the 15 day deadline, individuals require access to the FDS upon, or as close as possible to, start date. This objective requires that a notification about the person be provided to the Ethics Commission upon election, appointment, or hire. After receiving notification to file, the individual is to complete the disclosure report, providing information required by the Public Ethics Law, and submit the report on-line to a predetermined reviewer. Once approved, the report is to be submitted to the Ethics Commission for acceptance and retention.

If an individual does not submit an initial financial disclosure as required, the Public Ethics Law provides for fines and possible removal from office as a means of enforcement.

During 2011, 86 percent of the persons required to submit an initial financial disclosure did not do so within 15 days of beginning their new position. These reports were filed an average of 90, and a median of 62 days late after the date of hire. We found that users gained access to the FDS and received the system-generated filing requirement notification an average of 64 and median of 47 days after the date of hire.²⁴

Our review found that the process of identifying, notifying, and following up on County employees and others who must file initial financial disclosure forms requires a great deal of timely coordination between County departments. If one of the County departments does not provide the required information on schedule, it is impossible for the County and filers to meet filing deadlines. Operational and systemic delays can preclude the ability of an individual to access, complete, and submit an on-line disclosure report by the established deadline. The Ethics Commission does not have a back-up system that provides for filers to meet the deadline through submission of an alternative disclosure report (such as a fillable PDF document or paper copy of the report).

²³ Montgomery County Code, § 19A-18(f)(1).

²⁴ OIG computation of delinquencies observed in Financial Disclosure System data base as of January 17, 2012. Excludes existing employees transferring into role requiring disclosure, and commission members for whom no appointment date was available. Results of our testing that revealed that the required filing deadlines for changes in status are routinely missed may be found in Appendix E, which also provides a report of activity and delinquency by governmental entity.

Notification of Employment Status Issues

Information about changes of employment status is provided to the FDS by the County's Enterprise Resource Planning (ERP) system through a daily interface with the Positions Transactions System (PTS) and Human Capital Management (HCM) system. The PTS and HCM rely upon:

- Departmental input to the system about new positions and changes in staffing employment status (hire, transfer, or termination); and
- Office of Human Resources' processing of new hire, transfer, and termination staffing changes submitted by departments.

Our review found that notification to the HCM and PTS about new hire and transfer start dates can be delayed up to the time a hiring department submits the first payroll following the date of hire. This can delay notification for up to two weeks or more following hire, which is further delayed an additional two days awaiting the OHR's review and processing of payroll.

If a hiring department delays hire notification until the payroll submission, it is possible that the FDS may not receive information about a new hire for up to 17 days following the individual's start date.²⁵

Recommendation 2-a: Reduce Employment Notification Timeframes

We recommend that the Office of Human Resources implement procedural changes designed to eliminate the delays that prevent the Ethics Commission from providing FDS access to employees on their start dates.

Financial Disclosure System Issues

When updated with information about the start date, the HCM system generates an employment change event about the employee or official beginning service with the County or making an in-service transfer between two County positions. The County's ERP System transfers information about the change of employment status from the HCM system to the FDS via an interface. The FDS creates a requirement for a new disclosure report after it receives notification about a change of employment status.

²⁵ For example, an individual began employment with the County on July 5, 2011. This date is in the County's pay period covering July 3 through July 16. Per Office of Human Resources policy regarding its HCM / Payroll Cut off Schedule, all personnel transactions, including notification of hire, were to be submitted by the hiring department by July 20. OHR was required to process that payroll the next day. Allowing for overnight processing of the ERP system interface programs, the first date the FDS could provide an initial financial disclosure notification to this individual would be on July 22 – seventeen calendar days after start date, and two days after the statutory filing deadline.

We found that information about changes of employment status provided by the ERP interface contains information that the FDS cannot process, requiring human intervention to resolve resultant errors.

The FDS can only manage records coded as initial, transfer, annual, or final. During the interface process, numerous records are submitted to the FDS that are coded as “Other” events. While an “Other” coding may be an appropriate designation within the HCM system, changes coded as “Other” present an exception within the FDS that must be investigated and resolved by the Ethics Commission program specialist so that the FDS can process or eliminate the record. The Ethics Commission program specialist has found it necessary to maintain a manually prepared spreadsheet of all filers to monitor incorrectly coded information received through the interface.

“Other” records result from:

- An identified yet unmodified design anomaly within the ERP/FDS interface software program that allows inconsequential HCM changes (e.g., change of address, emergency contact, etc.) to be transferred by the interface to the FDS as a record classified as “Other”
- A design anomaly that DTS reports can result in a valid change of employment status record (initial, transfer, final) being superseded by another inconsequential HCM change coded as “Other” when multiple events are entered into the HCM for an individual on the same day; and
- Departmental human resource liaisons incorrectly coding a change in employment status as “Other” when entering information into the HCM.

The Ethics Commission, OHR, and DTS representatives that comprise the group that oversees operation of the FDS have determined the need to isolate and resolve the improper system design or modify software coding that causes the transfer of inconsequential records. No priority or target date was available.

Recommendation 2-b: Enhance ERP/FDS Interface Design

To strengthen internal controls and reduce the workload of the Ethics Commission program specialist, we recommend the Department of Technology Services in coordination with the Office of Human Resources and the Ethics Commission address the design anomaly and enhance the ERP/FDS interface software to cause the FDS interface to only transmit HCM changes that relate to a relevant FDS filing status.

Systems Access Issues

A number of steps must occur before an individual can gain access to the FDS in order to submit a financial disclosure.

Information about the individual's employment and filing status must be entered into the Office of Human Resource's (OHR) HCM and PTS systems²⁶ by a departmental human resources liaison. The filer must be provided access to the County's information systems through a single sign-on account (SSO) established in the Active Directory (AD)²⁷ by a departmental information technology (IT) liaison, and that record matched and reconciled with the OHR systems by the Unified Data Modeler (UDM) system. The individual's AD account must be granted the appropriate group membership and security policies necessary to access the FDS. Group membership registration is usually provided by a system's owner.²⁸ When all of these steps have been completed, the ERP interface will recognize the change in employment status as an event that requires action, and transmits the data to the FDS.

We observed that individuals who must submit an initial financial disclosure are not timely assigned the group membership registration privileges needed to access the FDS. We observed a lack of coordinated responsibility for assigning the group membership registration privileges. We found that departmental liaisons, OHR, DTS, and Ethics Commission Staff each possess a different understanding about who among them is responsible for this step. As a result, group membership registration privileges are routinely assigned only after an individual waiting to submit a financial disclosure contacts the Ethics Commission to question when FDS access will be gained.

The Ethics Commission receives its first notification about an individual's need to file a disclosure report on the day after the ERP/FDS interface. After receiving ERP/FDS interface notification, the Ethics Commission program specialist must act timely to manually match the individual's FDS record with the appropriate person to review and approve the submission. Lastly, a filing requirement notification is created and e-mailed to the individual's County-provided e-mail address.

Our review found several occurrences where users could not timely access the FDS. We discovered instances where this was due to:

²⁶ Appointment information about persons in Agencies, Boards, Commissions, or Committees originates directly from those entities, and, depending on the entity, may bypass the OHR systems.

²⁷ The AD contains a record for each user and computer device in the County government's extended information technology network. The AD record contains a unique identification code for each user, which becomes the individual's SSO log-in code for County computer systems. The AD record contains demographic, work location, and job function information about the individual, and also stores a listing of Active Directory Groups to which the individual has been granted access. Group Membership registration is required in order to access a computer system such as the FDS.

²⁸ The Department of Technology Services, as is customary in most information technology entities, designates an "owner" for each software program. The owner sets policy regarding who may access the software program, arranges for authorized users to gain access to the program, determines what modifications will be undertaken, and makes other decisions related to maintenance and operation of the software. The Ethics Commission is the owner of the Financial Disclosure System.

- Disclosure filers lacking the appropriate group membership registration necessary to access the FDS: and
- Departmental information technology liaisons lacking UDM system access privileges that allow them to modify HCM and AD reconciliation differences in those situations where a single IT liaison supports multiple departments.

Our tests revealed that untimely access to the FDS routinely caused late initial disclosure filing. The elapsed time between date of hire and date of notification to file an initial financial disclosure averaged 64 days, with a median of 47 days.

Recommendation 2-c: Address System Access Delays

We recommend that Department of Technology Services (DTS), in coordination with the Office of Human Resources (OHR) and the Ethics Commission Staff Director/Chief Counsel, modify the design of policies, procedures, and systems to enable initial filers to timely access the FDS and comply with the 15 day filing requirement of the Public Ethics Law.

Finding 3 - Annual Financial Disclosure: Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit annual financial disclosure reports by the established deadline. Public employees and officials frequently do not submit annual financial disclosure reports by the April 15 (or extended) deadline required by the Public Ethics Law.

The Public Ethics Law requires that persons in a position identified to file financial disclosure reports must submit an annual report for the calendar year by April 15 of the following year.²⁹ For 2010, the most recent annual reporting period, 29 percent of the disclosures were received after the extended deadline, and 4 percent had not been submitted as of January 17, 2012 - the date of our final data review.

The annual financial disclosure requirement applies to all individuals designated by the law, or by the action of the Executive or Council. The Public Ethics Law also requires the County Executive and Council to annually review and approve the list of individuals they designate as

²⁹ Montgomery County Code, § 19A-18(a)(1) requires designated individuals to file a financial disclosure statement by April 15 for the previous calendar year ending December 31. For the filing year 2010, delays in verifying and approving the list of designated filers required that notifications extending the filing deadline to May 16, 2011 be sent to all filers. While § 19A-6(a)(5) grants the Ethics Commission the authority to extend deadlines, in writing, the Minutes of the Ethics Commission's proceedings do not reflect discussion about or approval of the filing extension.

being required to disclose their finances.³⁰ The Ethics Commission distributes notifications about the filing requirement to individuals designated by the Executive and Council after it receives the list, which County regulations require to be delivered to the Ethics Commission by the Chief Administrative Officer no later than January 15 of each year.³¹

After receiving notification to file, the individuals are to complete the disclosure, providing information required by the Public Ethics Law, and submit the report on-line to a predetermined reviewer. Once approved, the reports are submitted to the Ethics Commission for acceptance and retention.

If an individual does not submit an annual financial disclosure as required, the Public Ethics Law provides for fines and removal from office as a means of enforcement.

Inefficient Annual Review and Approval Process

Our review found that the process of identifying and notifying individuals who must file annual financial disclosures requires a great deal of coordinated effort among County departments. Delays by any one of the County departments involved in the review, approval, and notification process can make, and have made it impossible for the County and filers to meet filing deadlines. Operational and systemic delays can preclude the ability of an individual to access, complete, and submit an on-line disclosure report by the established deadline. The Ethics Commission does not have a back-up system that provides for filers to meet the deadline through submission of an alternative disclosure report (such as a fillable PDF document or paper copy of the report).

Results of our testing that revealed that the required filing deadlines for annual disclosures are routinely missed may be found in Appendix E, which also provides a report of activity and delinquency by governmental branch or entity.

We observed that the annual process for identification and notification of financial disclosure filers of their filing obligation is cumbersome and time consuming. The process for the 2010 annual reporting period spanned eight months. Financial disclosure information maintained in the Positions Transactions System (PTS) and Human Capital Management (HCM) system is often inconsistent with financial disclosure information maintained in the Financial Disclosure System (FDS). Effort must be undertaken each year to reconcile the reporting requirement records of these systems in order for the disclosure requirement notifications to be sent to filers. This reconciliation requires:

³⁰ Montgomery County Code, § 19A-17(d) requires the Executive and Council to annually review the list of employees designated by them under § 17(a)-(b).

³¹ Code of Montgomery County Regulations 19A.17.01.02(B) requires that by January 15 of each year, the Chief Administrative Officer must submit to the Ethics Commission a list identifying each public employee who must file a financial disclosure statement under Regulation 19A.17.01.03.

- In September of each year the Office of Human Resources (OHR) to provide a list of current filers to County departments and agencies;
- Departmental human resource liaisons to review the lists for accuracy, making modifications as necessary, and return the lists for compilation by OHR;
- **By January 1**, the Ethics Commission to provide the forms for filing financial disclosure;³²
- **By January 15** and after review and approval by the County Executive and Council, the Chief Administrative Officer to deliver the list compiled by OHR to the Ethics Commission and the Department of Technology Services (DTS);
- DTS to transfer the names on the approved list into the Financial Disclosure System (FDS) and notify the Ethics Commission; and
- Ethics Commission staff to complete a quality review of the FDS updates and advise DTS to generate the FDS notifications that are delivered to filers who must submit their annual financial disclosure **by April 15**.

As a result, the list of persons required to file financial disclosures is effectively rebuilt each year. This is a wasteful process given that the information about filers is maintained in the County's PTS, HCM, and FDS systems. However, the many issues raised in Finding 2 of this report result in disparate information among the systems. The current reconstruction process has become a necessity to assure identification and confirmation of individuals subject to disclosure reporting.

Recommendation 3-a: Review and Streamline the Annual Reporting Processes

We recommend that the Chief Administrative Officer modify the procedures and shorten the reconfirmation process timeframe to annually identify and approve the individuals subject to financial disclosure. These changes should be designed to effect the Executive and Legislative branch and Boards, Committees, and Commissions compliance with the annual financial disclosure requirements of the Public Ethics Law.

Extension of the Annual Report Filing Deadline

The cumbersome annual financial disclosure review and approval process described above resulted in a need to extend the April 15 annual financial disclosure filing deadline in three out of the past four years.³³ The Ethics Commission minutes do not reflect deliberation about, reasoning for, nor approval of a filing extension for the Annual Disclosure Reports. Rather, the extensions appear to be an undocumented agreement between Ethics Commission and Executive branch staff. Although the Public Ethics Law makes provision for the Ethics Commission to extend a deadline for filing forms, that extension must be in writing.³⁴ However, review of the

³² Montgomery County Code, § 19A-18(h)

³³ The 2010 annual filing deadline was extended to May 16, 2011; the 2009 annual filing deadline was extended to April 30, 2010; the 2007 annual filing deadline was extended to May 15, 2008.

³⁴ Montgomery County Code, § 19A-6(a)(5).

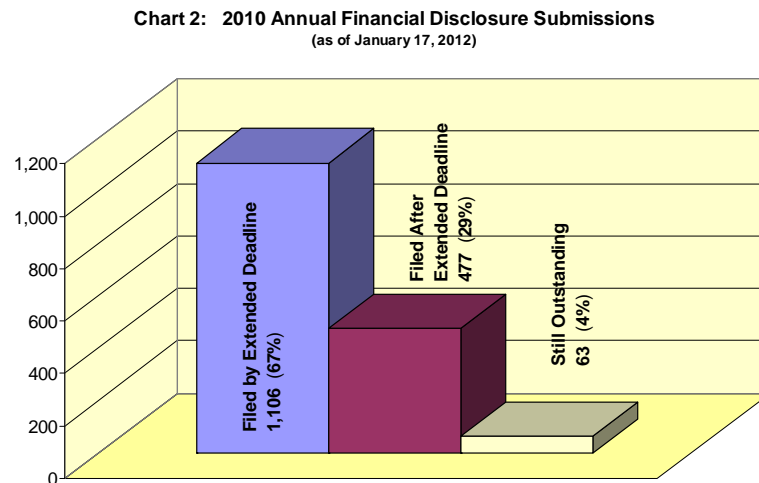
minutes of Ethics Commission meetings discovered neither discussion about nor approval of an extension in the filing deadline for the annual disclosure.

Recommendation 3-b: Formalize and Document Deadline Extension

We recommend that any extension of the financial disclosure filing deadline be granted only by the Ethics Commission, that such extension be subject to documented deliberation as to cause, reason, and benefit, and that the Commission’s review and approval be recorded in the Ethics Commission’s Minutes.

Delinquent Filers and Non-Filers

Our tests revealed that the required deadlines for annual financial disclosure filings are routinely missed. As Chart 2 indicates, 29% of the 2010 annual financial disclosures were filed after the extended deadline, and 4% were still outstanding as of the date of our final test of the data (January 17, 2012).³⁵



The County has no written policies as to the handling of delinquent filers or non-filers. Although the County Code permits fines and removal from employment of employees who fail to file a disclosure statement when required,³⁶ these steps are rarely, if ever, taken. The Ethics Commission sends a list of delinquent filers and non-filers to the County Chief Administrative Officer (CAO) for follow-up only on an ad hoc basis. However, the CAO and Ethics Commission have not developed written guidelines specifying the actions to be taken nor how the results of such efforts will be monitored and reported.

³⁵ OIG computation of Annual Financial Disclosure reports documented in Financial Disclosure System data base as of January 17, 2012.

³⁶ Montgomery County Code, § 19A-32.

Recommendation 3-c: Develop and Enforce Policies about Delinquent Filers

We recommend that the Chief Administrative Officer, in coordination with the Ethics Commission, develop and distribute written policies as to the handling of delinquent filers and non-filers of financial disclosures. These policies should address annual and change of employment status filings.

Finding 4 - Final Financial Disclosure: Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit final financial disclosure reports by established deadlines. Public employees and officials routinely did not submit financial disclosure reports by the date of separation from service with the County. Provisions of the Public Ethics Law that address remedial actions and penalties for non-compliance are not enforced.

The Public Ethics Law requires individuals subject to financial disclosure to submit a final disclosure statement prior to separating from service with the County. During 2011, 30 percent of the persons our tests reviewed were delinquent in the submission of the required final financial disclosure (as of the January 17, 2012 date we used for our final data review).

The final disclosure report is to cover the period from the date of the most recently submitted annual or initial report through the termination date. Montgomery County Code requires that final pay is to be withheld from individuals who fail to file a final disclosure before departure from County service.³⁷

In order to meet the separation date filing deadline, individuals should have access to the FDS final report as soon as possible after the individual's separation date is known. This objective also requires that notification about the person be provided to the Ethics Commission prior to termination so that the individual will have system access to the FDS. After receiving notification to file, the individual is to complete the report, providing information required by the Public Ethics Law, and to submit the report on-line to a predetermined reviewer. Once approved, the report is to be submitted to the Ethics Commission for acceptance and archival.

Our review found that the process of identifying, notifying, and following up on County employees and others who must file a final financial disclosure form requires a great deal of timely coordination between County departments. If one of the County departments does not provide the required information on schedule, which we observed to be a recurring issue, it may be impossible for the County and filers to meet filing deadlines.

³⁷ Montgomery County Code, § 19A-18(f)(2).

Information about an individual's separation from service is provided to the FDS by the County's Enterprise Resource Planning (ERP) system through a daily interface with the Positions Transactions System (PTS) and Human Capital Management (HCM) system. The PTS and HCM rely upon:

- Departmental input to the system about termination status; and
- Office of Human Resources' processing of termination staffing changes submitted by departments.

Our review found that notification to the HCM and PTS about termination dates can be delayed until the date a department submits the first payroll after the individual has announced intent to leave County employment, a delay of up to two weeks following the employee's announcement. Notification to the FDS can be further delayed by an additional two days pending review and processing of payroll by OHR. Operational and systemic delays can preclude the ability of an individual to access, complete, and submit an on-line disclosure report by the established deadline. The Ethics Commission does not have a back-up system that provides for filers to meet the deadline through submission of an alternative disclosure report (such as a fillable PDF document or paper copy of the report).

If a department delays termination notification until the payroll submission, it is possible that the FDS may not receive information about a termination for up to 17 days following the announcement of separation – a time period that exceeds the traditional two-week notice.

Penalties for Failure to File a Final Financial Disclosure

A concern arises that delays that may occur due to the issues raised above often preclude sending timely requests for disclosure reports to individuals before they separate from County service. Upon separation of service with the County, an individual loses access to the County's Intranet (and FDS) and the County-provided e-mail account to which the Financial Disclosure System addresses the final disclosure report request. The absence of an e-mail address requires the Ethics Commission to obtain a contact address from OHR, and prepare written notifications and follow-up requests to be delivered by mail in order to obtain final disclosures - a lengthy manual process. As a result, for more than two years the Ethics Commission has not requested the County Attorney's Office to aggressively pursue and obtain reports from individuals who have left County employment. The Staff Director/Chief Counsel reports that there have been past Ethics Commission staff communications to various County officials regarding this requirement, however the authority has not been imposed.

Recommendation 4: Enforce or Modify the Penalty Language of the Public Ethics Law

We recommend either enforcement of the law that requires final pay be withheld from individuals who have not filed a final disclosure, or, alternatively, the Ethics Commission propose legislative changes to the County Code that would establish a filing deadline and non-compliance penalty provision that can be enforced.

Finding 5 - Financial Disclosure Notifications: The Financial Disclosure System used by the Montgomery County Ethics Commission lacks the notifications, reminders, and management tracking reports to help ensure that filers, approving department directors, and the Ethics Commission staff meet the financial disclosure filing deadlines set by the Public Ethics Law.

The Ethics Commission and the County developed the Financial Disclosure System (FDS) in 2004 to manage the initial, annual, transfer, and final financial disclosure reporting requirements set forth in the Public Ethics Law. The FDS is a legacy database system that accounts for the filings of all County personnel required to disclose such information.

The FDS maintains information about the individuals required to report, the nature of their reporting requirement, and the management individuals responsible for reviewing and approving their disclosures. FDS also retains archives of previously-submitted disclosure filings.

When correctly populated with accurate data, the FDS generates an e-mail notifying each individual required to file an initial, transfer, annual, or final Financial Disclosure Report of the requirement and due dates. The FDS also notifies the individual about the progression of his/her Financial Disclosure Report through the approval and acceptance process. The County's financial disclosure processes rely heavily on reviewing managers ensuring that individuals file their financial disclosure forms on time.

The FDS does not, however, for any type of filing:

- consistently notify a reviewing manager that a financial disclosure form has been submitted that requires the manager's review and approval, or
- alert reviewing managers that one or more persons are delinquent in completing and submitting a disclosure.³⁸

³⁸ Over the period from February 27 through March 8, 2012, DTS introduced an FDS management report that reflects filers who are not in compliance with disclosure requirements. The Ethics Commission Staff Director/Chief Counsel reports that he has not yet seen this report.

The FDS also does not provide financial disclosure filers with follow-up notifications about initial, transfer, or final filing requirements.

We understand that the FDS has the data and functionality necessary to do each of these notifications. The FDS currently uses such functionality to provide frequent reminders to annual disclosure filers. Indeed, 67% of annual filers met the established filing deadline, whereas just 14% of initial filers (who do not receive follow up reminders) met the 15 day statutory deadline.³⁹

In Appendix C, we have identified several instances where a follow-up reminder would serve to prompt filers, reviewers, and upper management of upcoming or delinquent filings.

Recommendation 5: FDS Software Modification

We recommend that DTS conduct a requirements and capability analysis of FDS notifications and tracking. Based on the results of that review, DTS could modify the FDS to enable better compliance with the financial disclosure ethics laws. Such modification should also include the development of an alternative, manually completed disclosure report that can be used as a permanent fail-safe back up to the automated disclosure system. The FDS could better support the Public Ethics Law by more actively prompting financial disclosure filers and reviewing managers to timely meet their obligations.

Finding 6 - Outside Employment Activities: Delays in the manual, paper-based Outside Employment Approval Request process followed by the Ethics Commission increase the risk of an individual engaging in outside employment activities that are not allowed under the Public Ethics Law.

The Public Ethics Law sets forth the conditions under which County employees and public officials may engage in employment with an employer other than the County.⁴⁰ The Ethics Commission provides an outside employment request form on its website. Members of the Montgomery County Department of Police who are covered by the collective bargaining agreement between the county and the Fraternal Order of Police are subject to secondary employment policies and procedures contained in Article 27 of the collective bargaining

³⁹ OIG computation of delinquencies observed in Financial Disclosure System data base as of January 17, 2012. Six filers of 43 returned disclosure within 15 days. Excludes existing employees transferring into role requiring disclosure, and commission members for whom no appointment date was available.

⁴⁰ Montgomery County Code, §§ 19A-11-15.

agreement.⁴¹ The Department of Police has developed its own outside employment request forms.⁴²

The Public Ethics Law requires the Ethics Commission to catalog certain information about the outside employment, and establishes a process for the employment request to be approved by the individual's manager and by the Ethics Commission. The Ethics Commission is also required to make certain information about approved employment requests available for public inspection.

Our review noted that information about outside employment of County employees and public officials is being collected, approved, and publicly disclosed as prescribed by the Public Ethics Law.

It was observed that manual processes are solely used to collect, approve, and publish information about the approval of outside business requests. The Ethics Commission Staff Director/Chief Counsel reported that the amount of time between the supervising manager's preliminary approval and the Ethics Commission's confirmation has been increasing. This delay is attributed to the workload of the Commission's program specialist. Although we observed that the majority of outside employment approval requests were approved by the Ethics Commission, the delay represents an increased risk of individuals engaging in outside employment that the Commission might not approve.

Recommendation 6: Revise Outside Employment Approval Practices

We recommend that the Ethics Commission implement the procedural and/or systemic changes necessary to timely meet the Outside Employment Approval responsibilities delegated to it in the Public Ethics Law.

Finding 7 - Continuity of Operations: The limited deployment of computer-based systems and the Ethics Commission's reliance upon manual processes contributes to delays and backlogs in the completion of assigned tasks. The absence of written procedures subjects the County's ethics activities to an undue risk in the continuity of operations in the absence or departure of its staff.

⁴¹ Code of Montgomery County Regulations, § 19A.06.01 Regulations of Secondary Employment (Police).

⁴² Code of Montgomery County Regulations § 19A.06.01.04, Request Procedure, provides for two outside employment request forms: "Secondary Employment Request" (MCP 307) is for police officers to use for any outside employment, and "Secondary Employer Agreement for Security-Related Work" (MCP 309) is also to be submitted when the outside employment is security-related.

Inadequate Procedures Documentation

The Ethics Commission lacks written comprehensive documentation of the manual procedures currently performed in enforcing the provisions of the Public Ethics Law. The lack of written procedures can make continuity of operations in the absence or departure of staff difficult if not impossible. Undocumented manual activities that present operational vulnerability are:

Financial Disclosure

Currently, the FDS includes filing information for over 2,000 filers. Although the FDS database is automated, the Ethics Commission program specialist currently performs a significant number of manual processes to maintain it, including:

- reviewing new information in FDS that is received from the County's automated systems;
- checking for duplicate records;
- processing employee-proposed change notifications to generate appropriate filing notifications;
- arranging records for aging and possible future follow up; and
- generating follow-up notices to those individuals who do not timely submit the required disclosure.

Lobbying Registration

The Ethics Commission program specialist performs the following manual processes related to the annual registration and semi-annual reporting of 119⁴³ lobbyists:

- receiving, reviewing, responding to questions about, and approving registrations;
- analyzing and depositing annual lobbyist registration fees;
- receiving and recording semi-annual information reports of lobbyist activities;
- resolving problems with lobbyist registrations and reports; and
- compiling information and preparing public reports about lobbyist activities.

Outside Business Activities

The Ethics Commission program specialist performs the following manual processes related to over 1,000 requests each year to approve outside employment activities:

- receiving, reviewing, and transcribing a summary of each outside employment request to a spreadsheet;
- resolving problems with the approval request;
- presenting each employment request summary to the Ethics Commission;
- disseminating the Ethics Commission's decision to the individual submitting the request; and

⁴³ Refer to note 17 on page 5 of this report.

- compiling information and preparing public reports about outside employment request decisions.

Performing all of the above manual processes requires a great deal of institutional knowledge and experience. Retention of the current Ethics Commission program specialist is thus critical to the continued smooth operation of the ethics program. However, in the event of an absence, departure, or increase in workload, the knowledge, skills, and abilities of the Ethics Commission program specialist could not be readily disseminated to other individuals, limiting the ability of the Ethics Commission to fulfill its obligations.

Procedures manuals are a vital element of internal control. They clarify procedures to be performed, which is often critical in the event of employee turnover, legal challenges, independent audit, and managerial review.

Recommendation 7-a: Document Procedures in a Manual

We recommend that the Ethics Commission document procedures that describe the automated and manual procedures the current program specialist and staff director/chief counsel monitor or personally perform. The descriptions should be in sufficient detail to permit another person's understanding and performance of the steps therein.

Staffing Workload of the Ethics Commission

The Ethics Commission program specialist performs a number of procedures as described in the previous section. She also conducts the recurring administrative functions of the office, including answering telephone calls, maintaining files, and ordering and storing supplies.

The workload of the Ethics Commission program specialist has been increased by the enactment of Council Bill 37-10. Prior to enactment of this bill in July 2010, the County Attorney's office served as counsel to the Ethics Commission. Under Bill 37-10, the role of counsel is now provided by the Staff Director/Chief Counsel of the Ethics Commission, who also serves as director of the department. The Staff Director/Chief Counsel position replaced the position of Executive Director, but was also assigned additional responsibilities. The legal support responsibilities assigned to the Staff Director/Chief Counsel represents additional duties to be addressed by the Ethics Commission staff. No additional staffing to handle the increased workload has been provided.

Placing all of the above responsibilities in the hands of two persons causes concern from several standpoints: there is a lack of segregation of duties, difficulty in meeting reporting requirements and performing daily operations, and risk of Ethics Commission malfunction in the event of employee departure.

Recommendation 7-b: Evaluate and Modify Staffing Workload

We recommend that the Ethics Commission streamline or eliminate procedures where feasible. The Ethics Commission should pursue increased use of automation in the Financial Disclosure, Lobbyist Registration, and Outside Employment Approval Request activities.

Summary and Conclusions

We found widespread noncompliance with financial disclosure filing deadlines, due to poor communications, poor coordination among County departments and systems, and enforcement shortcomings.

We have concern that there is no overarching entity within Montgomery County Government that has the authority, accountability, and control to ensure that the financial disclosure reporting process operates as anticipated by the Public Ethics Law. For example, hiring departments must submit timely notices of employment changes, department managers must ensure their staff submit timely disclosures, and other departments must modify the design of system interfaces. User departments that have the authority and responsibility to effect change have not been directed to do so.

We observed that a significant number of initial and final financial disclosure reporting delinquencies resulted from a filer's inability to access the FDS, precluding the filer from submitting a timely on-line disclosure.

We found that the financial disclosure system (FDS) does not provide adequate follow-up notifications to filers and reviewing managers.

We found that the County does not enforce penalties required or allowed by the Public Ethics Law for delinquent filers and non-filers.

We found that the Ethics Commission office has not put its many manual procedures in writing, which is an operating risk, given that the office has only two staff members.

Summary of Ethics Commission and Chief Administrative Officer's Comments and OIG Response

The Ethics Commission Staff Director/Chief Counsel's (Staff Director) and Montgomery County Chief Administrative Officer's (CAO) responses to the draft OIG report are provided in their entirety in Appendix B of this report. Both generally concur with our findings and recommendations relating to the financial disclosure process. The responses did not cause us to alter our findings or recommendations.

The CAO did not comment on our recommendations concerning the approval of outside employment requests and continuity of operations within the Ethics Commission, noting that those are matters within the purview of the Ethics Commission.

Recommendation 1: Financial disclosure business process ownership, and

Recommendation 2: Initial financial disclosure

The Staff Director and CAO agreed with these recommendations. The Staff Director and CAO stated they have mutually agreed to transfer the responsibility for the logistical operation of the financial disclosure process to the Executive Branch during April/May of this year.

OIG Comment:

The planned actions are consistent with our recommendations.

Finding 3 - Annual financial disclosure

The Staff Director and CAO generally concurred with our recommendations regarding the annual disclosure process; however, the CAO took issue with our finding that policies and procedures have not been implemented in Montgomery County that would ensure submission of annual disclosure reports by the established deadline. The CAO stated that rather than a lack of policies, it was adherence to those policies that is at issue.

OIG Comment:

Our recommendation did not suggest a need for additional policies or procedures. We noted only that the policies and procedures we reviewed were not effectively implemented.

Recommendation 3-a: Review and streamline the annual reporting processes, and

Recommendation 3-c: Develop and enforce policies about delinquent filers

Both the Staff Director and CAO concurred with our recommendations. In his response, the CAO discussed actions he recommends to streamline the annual review and approval process.

OIG Comment:

We have not reviewed any of the CAO's recommended actions. However, their intent is consistent with our recommendation.

Recommendation 3-b: Formalize and document deadline extension

While the Staff Director concurred with our recommendation, the CAO disagreed. In his response, the CAO stated that following the transfer of financial disclosure logistical operations to the Executive Branch, the County Executive/CAO would be better situated to make a determination about extending deadlines.

OIG Comment:

We acknowledge that after the proposed transition is completed, the County Executive/CAO may be in a better position to know when an extension might be needed. However, the Public Ethics Law specifically assigns the responsibility and authority for extending a filing deadline to the Ethics Commission.⁴⁴

Recommendation 4: Enforce or modify the penalty language of the Public Ethics Law

The CAO agreed with our recommendation but took issue with our finding that policies and procedures have not been implemented in Montgomery County that would ensure submission of final disclosure reports by the established deadline. The Staff Director partially concurred, stating that the existing law should be enforced, but not agreeing with the suggestion of pursuing legislative changes.

OIG Comment:

Our recommendation did not suggest a need for additional policies or procedures. We noted only that the policies and procedures we reviewed were not effectively implemented. The intent of our recommendation was to ensure that covered employees terminating County employment file timely final disclosures. Our recommendation offers either option.

Recommendation 5: FDS software modification

Both the Staff Director and the CAO agreed with our recommendation for improvements to Financial Disclosure System notifications and status tracking. However, the Staff Director took issue with our suggestion that the Department of Technology Services provide an alternative, manual disclosure form to serve as a fail-safe backup. The Staff Director states there was no consideration given to the resources necessary for maintaining what, in effect, would be a parallel system for filing, reviewing, and maintaining manually completed reports.

⁴⁴ Montgomery County Code § 19-A 6(a)(5)

OIG Comment:

Our recommendation anticipated a manual form only in those instances where circumstances prevent submission of an automated disclosure. A parallel system was not the intent of our recommendation. However, we do agree that the number of manual filings that might result could create an additional workload burden for the Ethics Commission's staff.

Recommendation 6: Revise outside employment approval practices

The Staff Director partially concurred with our recommendation to revise outside employment approval to make the process more timely. While he agreed that electronic processes should help streamline and reduce manual input, he stated that the Ethics Commission's FY 2013 budget request for this purpose was not funded. He also stated his opinion that until sufficient resources are dedicated, the Ethics Commission will not be able to fulfill its programmatic and other responsibilities.

OIG Comment:

We did not conduct an analysis which would be necessary to determine and recommend an appropriate resource level for the Commission. However, we do not disagree with the Staff Director that timely review of the outside employment requests presents challenges for the Ethics Commission.

Recommendation 7(a): Document procedures in a manual, and

Recommendation 7(b): Evaluate and modify staffing workload

The Staff Director concurred with our recommendations that documented procedures are necessary for the sustainable operation of the Ethics Commission's programs. However, in addressing the need to document the activities of the Ethics Commission staff in written procedures, he noted limited resources available to address the issue at this time.

OIG Comment:

We did not conduct an independent resource analysis as a part of our review. However, we do understand that the burdens required to document operations while conducting both the administrative activities and the primary mission responsibilities required of the Ethics Commission could be a challenge. This highlights the concern expressed in our report that, should either member of the Ethics Commission staff become temporarily or permanently unable to perform their assigned tasks, there would be few, if any, documents that another individual could find in order to aid with the continuity of Ethics Commission's operations.

Appendix A: Review Methodology

Our review methodology included:

- Reviewing the Public Ethics Law to document duties and responsibilities of the Ethics Commission;
- Reviewing manual and systemic processing flows used to submit and track financial disclosure reports;
- Reviewing lobbyist registration statements, lobbyist semi-annual reports, and Ethics Commission reports on lobbyist activity;
- Reviewing county employee requests for approval of outside business activities, verifying that approval is documented in the meeting minutes of the Ethics Commission, and tracking the approvals to publicly available records;
- Interviewing Ethics Commission staff, Office of Human Resources and Department of Technology Services personnel, the departmental human resources liaison and the departmental information technology liaison for Council staff, and select current and former Ethics Commission members; and
- Applying judgmental sampling to selected data.

Our preliminary scope of activities projected testing the completeness of lobbyist registration and requests for approval of outside employment. During review of those processes we determined that the voluntary nature of those reporting activities did not provide an opportunity to readily identify unreported lobbyist or outside employment activities. Therefore, we limited our review to information received by the Ethics Commission and the handling of that information as prescribed by the Public Ethics Law.


Appendix B: Ethics Commission and Chief Administrative Officer Responses



MONTGOMERY COUNTY ETHICS COMMISSION

April 3, 2012

To: Edward Blansitt, Inspector General

From: Robert Cobb 
Staff Director/Chief Counsel

Subject: Final Draft Report

Thank you for the opportunity to provide written comments on the draft report *Review of Certain Montgomery County Ethics Activities*.

As you are aware, the decision to conduct an Inspector General review of Ethics Commission programs was a consequence of a meeting conducted in your office with the newly appointed Staff Director/Chief Counsel of the Ethics Commission in July 2011. The brief experience of the Staff Director/Chief Counsel and the isolated experiences of new Inspector General staff in trying to access the Financial Disclosure System suggested considerable challenges being faced by Ethics Commission staff. It seemed that a review by the Inspector General might be able to bring transparency to and provide insight to the nature of these challenges and to identify possible avenues for their resolution.

At the outset, the Ethics Commission is greatly appreciative of the effort the Inspector General's office has committed to this review. The review of the Financial Disclosure System and other activities of the Ethics Commission provides useful insight to the source of problems and the effects those problems have on compliance with the Public Ethics Law.

Before responding to the specific findings and recommendations in the report, it may be contextually helpful to provide an executive level comment regarding the establishment and operation of a government ethics program.

There are codifiable and uncodifiable elements to sound and ethical government. The uncodifiable elements relate to the culture, values, and ethic of government employees and their attention and commitment to doing what is right in putting government and its purposes ahead of private interests. The uncodifiable elements are a function of the character of elected officials, leaders, managers, and employees at all levels and are a reflection of the character and nature of the society in which the government exists.

The goal of operating government free from inappropriate influence of private interests can be sought through codification and implementation of laws and regulations that promote an ethical

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culture. Laws and regulations and their enforcement can influence the culture and values of a government, but laws and values are separate. In other words, a government can operate without inappropriate influence of private interests in the absence of a regime of ethics laws and regulations or their effective implementation; on the other hand, sound laws and regulations and the full execution of those laws and regulations are no guarantee of ethical government. But proper execution of sound laws intended to promote ethical government increase the likelihood of ethical conduct, and provide a basis for the public to have confidence that government employees are not making decisions based on personal financial interests and relationships.

The report of the Inspector General deals with the Montgomery County Public Ethics Law and its implementation. The requirements of the Public Ethics Law having been set, County government must have processes and systems that are designed to implement those requirements, and resources and support for operation of those systems must be adequate to sustain the objective of meeting the Code's requirements.

The failure of processes and systems to implement the Public Ethics Law does not correlate to a conclusion that Montgomery County government is operating in an unethical fashion, and the Inspector General makes no such finding. However, when systems and processes necessary to bring about compliance with ethics requirements imposed by law fail, the intended benefit of the Public Ethics Law including greater assurance of ethical government and the promotion of public confidence in government are, to the extent of the failure, diminished.

With an enterprise-wide system, there has to be an enterprise-wide commitment to fulfilling the letter of the requirements and dedication to ensuring the establishment of systems that meet the specific requirements. This is true of the implementation of laws and rules designed to prevent conflicts of interest and other unethical activity, and it is true of the implementation of a system to collect and review disclosures of financial and other interests. Whether it is establishing a workable database of identifying information about individual filers so that it is known who is supposed to file what and when, or whether it is the proper notice, collection, review, and records management for disclosures, the commitment to execution must be organized and executed within all elements of County government.

Just as a commitment to ethical government is a government-wide commitment with accountability extending to every County elected official, manager, and employee, the successful execution of a comprehensive financial disclosure system is a government-wide commitment. In Montgomery County, it may be that too much responsibility for the execution of the financial disclosure system devolved upon the Ethics Commission, to a point where the Ethics Commission staff was conducting roles and responsibilities that should be handled by others. Having Ethics Commission staff spending a great deal of time trying to verify the employment status of employees the County executive has designated to file disclosure reports is one such example; that could be a human resources function and not an Ethics Commission function. Critical to execution of the County's Public Ethics Law is establishing systems where roles and responsibilities are aligned with the authority and power to implement system requirements.

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Some major steps have already been taken towards addressing this challenge, as will be discussed further below in the response to Recommendation 1.

Aside from operational roles and responsibilities is a second critical challenge, which concerns system design. At the highest level, the law has certain requirements about the filing of financial disclosure reports. The law indicates who is to file (or a process for the identification of filers), what is to be filed, and when the filings are to occur. The process for the submission and review of financial disclosure reports, to include the electronic financial disclosure report filing system, must be aligned with the top level requirements established by the Public Ethics Law. If they are not, then compliance with the law's requirements will not be possible. As the Inspector General report establishes, several functionalities of the financial disclosure system are not aligned with legal requirements. The Inspector General report focuses on a number of points of failure in the current system and how failures and delays frequently occur at those points of failure.

The Inspector General report does not recommend an overall top to bottom review of the financial disclosure system be conducted to include reconsideration of the system level requirements and the existing system's ability to meet those requirements. However, it may be time the County engaged in process review and reengineering of the human and electronic systems for financial disclosure so that compliance with the Public Ethics Law is facilitated. In doing so, it would be critical for those reengineering the process to make sure that: the system design meets the system requirements as set by law; roles and responsibilities are aligned with functional roles and authority; and adequate resources are dedicated to the reengineered system so that it operates as intended.

Several other jurisdictions, including the Maryland State Ethics Commission and certain elements of the Federal government, have electronic filing systems. Conducting a technical review of the advantages and disadvantages of existing systems might surface efficiencies that can be incorporated into the financial disclosure system.

A reengineered process might, for example, result in the more effective utilization of human resources information that is within the Enterprise Resource Planning (ERP) system. Lastly, as both State and County law regarding financial disclosure are changing, it is critical that the system be nimble to accommodate both major and minor changes in law. The Ethics Commission notes that conducting such a comprehensive review would be expensive and adequate resources would have to be dedicated to ensure both the success of the review and the implementation of the resultant reengineered processes.

Below are the Ethics Commission's specific responses to recommendations in the Inspector General's report.

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Recommendation 1: Financial Disclosure Business Process Ownership

The County Executive and Council should work with the Ethics Commission Staff Director/Chief Counsel to ensure that authority, accountability, and control for the logistical operation and enforcement of the financial disclosure filing process are clearly delegated. It is further recommended that a staff member be designated within each of the Executive and Legislative branches and Boards, Committees, and Commissions to be responsible for ensuring compliance with the financial disclosure filing requirements of the Public Ethics Law.

The Ethics Commission concurs with the recommendation. It is critical that the entire financial disclosure process be organized in such a fashion that roles and responsibilities are properly aligned with functional authority, so the process can work as designed and accountability for the process is clear.

Recognizing its own lack of authority and power to institute needed change with regard to the financial disclosure process, the Ethics Commission recommended to the Chief Administrative Officer (CAO) in December 2011 that "Ownership" of the financial disclosure system should be transferred from the Ethics Commission to the CAO and the CAO's designees. The Ethics Commission would retain oversight responsibility and would report publicly on compliance and performance.

The CAO agreed to this transfer of authority. Of course, that a transfer of authority is taking place is not in itself a solution. But, it will allow for management to delegate responsibility for activity to those with authority to execute those responsibilities. In particular, issues relating to the status of employees are expected to be handled by the Office of Human Resources (OHR). The processes associated with ensuring that employees file their reports will be handled at the first instance by department managers. The Ethics Commission will coordinate with other Executive Branch officials, to include the County Attorney's office, to institute coordinated enforcement action. With respect to each function, there will be greater accountability because the responsible party will have the power and authority to take the action it is expected to take.

At this time, though, the transfer of responsibility has not occurred. The CAO's office has assigned the bulk of the system maintenance responsibility to the Office of Human Resources, but the OHR has demurred on acceptance of responsibility to date as it does not have personnel to carry out the function of coordinating the system. The Ethics Commission has been informed that this hiring will occur in the spring or early summer. As there are a number of roles and responsibilities that come to bear in the administration of the system, and the delegation of responsibilities is under the purview of the CAO, the Ethics Commission looks forward to coordinating with the CAO's office as the management system for the Financial Disclosure System is crystallized.

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Recommendation 2-a: Reduce Employment Notification Timeframes

We recommend that the Office of Human Resources implement procedural changes designed to eliminate the delays that prevent the Ethics Commission from providing FDS access to employees on their start dates.

The Ethics Commission agrees that the financial disclosure system design and operation appears to prevent and even preclude timely filing of initial financial disclosure reports. In order for initial filers to be able to file in accordance with the law and for the County to be able to review these reports so that it can ensure that the new filers do not have conflicts of interest that need to be addressed, initial filers need to have an ability to file a report as soon as they have begun service in a filing position. The Ethics Commission notes that pursuant to its transfer of responsibilities to the CAO, it does not expect to be the entity providing access to the FD system after the transfer.

Recommendation 2-b: Enhance ERP/FDS Interface Design

To strengthen internal controls and reduce the workload of the Ethics Commission program specialist, we recommend the Department of Technology Services in coordination with the Office of Human Resources and the Ethics Commission address the design anomaly and enhance the ERP/FDS interface software to cause the FDS interface to only transmit HCM changes that relate to a relevant FDS filing status.

The Ethics Commission agrees that as designed, the interface system communicates information that is either incorrect or otherwise interferes with the efficient operation of the financial disclosure system. The Commission notes that as a result of the intended transfer of system operation to the CAO, the burden of making sure the financial disclosure system has loaded into it accurate information will not be on the Ethics Commission but on the CAO and the CAO's designees. It is critical that the person responsible for management of the list of financial disclosure system filers has all required support in the execution of that function and that accountability for the accuracy of the list rest with a senior management level employee.

Recommendation 2-c: Address System Access Delays

We recommend that Department of Technology Services (DTS), in coordination with the Office of Human Resources (OHR) and the Ethics Commission Staff Director/Chief Counsel, modify the design of policies, procedures, and systems to enable initial filers to timely access the FDS and comply with the 15 day filing requirement of the Public Ethics Law.

We agree, and look forward to working with DTS and OHR to accomplish this. New filers should have immediate and unobstructed access to disclosure forms, which should be internet based. When additional processes are involved, the risk of delay and error is introduced.

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Recommendation 3-a: Review and Streamline the Annual Reporting Processes We recommend that the Chief Administrative Officer modify the procedures and shorten the reconfirmation process timeframe to annually identify and approve the individuals subject to financial disclosure. These changes should be designed to effect the Executive and Legislative branch and Boards, Committees and Commissions compliance with the annual financial disclosure requirements of the Public Ethics Law.

We agree that the process should be reengineered with a view toward alignment with the Public Ethics law. For example, if the Public Ethics Law contemplates that the Ethics Commission will make financial disclosure reports available on January 1 for annual filings, then the framework for identification of filers should be ready by January 1. At the very least, financial disclosure forms should be available to filers by January 1 and a system in place for receiving filings from those who wish to file.

Recommendation 3-b: Formalize and Document Deadline Extension

We recommend that any extension of the financial disclosure filing deadline be granted only by the Ethics Commission, that such extension be subject to documented deliberation as to cause, reason, and benefit, and that the Commission's review and approval be recorded in the Ethics Commission's Minutes.

Concur. The Ethics Commission will document any future extensions accordingly.

Recommendation 3-c: Develop and Enforce Policies about Delinquent Filers

We recommend that the Chief Administrative Officer, in coordination with the Ethics Commission, develop and distribute written policies as to the handling of delinquent filers and non-filers of financial disclosures. These policies should address annual and change of employment status filings.

Concur. A comprehensive set of policies and procedures towards enforcement of delinquencies and non-filings should be established. However, it is critical to the establishment of these policies and procedures that the financial disclosure system be operated in a manner consistent with the Public Ethics Law. As it stands now, for example, in many cases employees are impeded by the design and application of the system from timely filing of their reports. Obviously, enforcing a law when compliance with the law is made impossible by the very people who would be enforcing it makes no sense. So when initial or termination filers are prevented by the system itself from timely filing, strict enforcement of the timely filing requirement is impossible. Once the framework supplied by the Public Ethics Law for the timely filing of reports is lost, then enforcement becomes subjective and ad hoc.

As a practical matter, as a consequence of the multiple system failures in the system, the Ethics Commission exercised its judgment in how it would seek to obtain reports that were not filed.

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The Commission focused on the failure of current employees and current board, committee and commission members to file. As a practical matter, as a result of the efforts and working with the CAO, all current employees filed their 2010 annual financial disclosure reports and all but a very few current board, committee and commission members have filed. However, with respect to termination filings, no effort has been made by the Ethics Commission to enforce the failure to file. The financial disclosure system is designed to obtain these reports before employees leave service. There are system failures in obtaining these reports which are attributable to the design and management of the system. These design and management deficiencies include termination of access to County computer systems, failure of the County's check-out policies, and failure of the County to enforce the requirement to withhold the paycheck of a filer leaving service who has failed to file. Extremely time consuming and often fruitless attempts at enforcement would have no deterrence benefit and would have no impact on correcting the system failures. Therefore, what is in effect a suspension of enforcement of the non-filing of termination reports is the appropriate response to this system failure. Instead, the Ethics Commission has notified the CAO of the importance of department managers of using existing County check-out policies requiring that financial disclosure reports be filed prior to an employee's termination from County service. Moreover, the statutory mechanism of withholding an employee's final paycheck should be used if an employee refuses to submit a final disclosure report in connection with the check-out process. There should be no need for enforcement by the Ethics Commission of termination filings except in an extraordinary case.

Recommendation 4: Enforce or Modify the Penalty Language of the Public Ethics Law

We recommend either enforcement of the law that requires final pay be withheld from individuals who have not filed a final disclosure, or, alternatively, the Ethics Commission propose legislative changes to the County Code that would establish a filing deadline and non-compliance penalty provision that can be enforced.

Partially concur. The Ethics Commission concurs in the recommendation that the Public Ethics Law be enforced; the Ethics Commission does not agree that the alternative suggestion that the law be amended to replace the penalty provision. The Ethics Commission believes the provision could be enforced, but is not.

Recommendation 5: FDS Software Modification

We recommend that DTS conduct a requirements and capability analysis of FDS notifications and tracking. Based on the results of that review, DTS could modify the FDS to enable better compliance with the financial disclosure ethics laws. Such modification should also include the development of an alternative, manually completed disclosure report that can be used as a permanent fail-safe back up to the automated disclosure system. The FDS could better support the Public Ethics Law by more actively prompting financial disclosure filers and reviewing managers to timely meet their obligations.

Partially Concur. The Commission concurs in that part of the recommendation focused on a requirements and capability analysis of financial disclosure system notifications and tracking,

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with necessary modifications to be made. The Ethics Commission believes the notification system should be reengineered to ensure adequate and timely notice to filers, reviewers, management and the Ethics Commission regarding the status of all filers. Moreover, the Commission believes that the analysis recommended should be part of an overall system review of the financial disclosure system.

Aside from fundamental data integrity regarding identifying information about each filer, the most important element to the Ethics Commission in any electronic system is the ability of that system to accurately report on noncompliance with Public Ethics Law requirements. Some efforts have recently been undertaken by the Department of Technology Services (DTS) to enhance the system's reporting capabilities in this regard, but reports have been flawed by the system's inability to consistently distinguish between what type of report is expected from filers.

As to that part of the recommendation concerning the development of a "an alternative, manually completed disclosure report that can be used as a permanent fail-safe back-up", the Ethics Commission recognizes the inherent feasibility of this idea, however, notes that apparently no consideration has been given to what resources would be necessary to create what would be a parallel system for filing, review and maintenance of these manually completed reports. The introduction of a parallel system should not be implemented without a cost-benefit analysis of the idea, with a firm understanding of what resources will be required to create and operate the parallel system.

Recommendation 6: Revise Outside Employment Approval Practices

We recommend that the Ethics Commission implement the procedural and/or systemic changes necessary to timely meet the Outside Employment Approval responsibilities delegated to it in the Public Ethics Law.

Partially Concur. The Ethics Commission believes that there should be electronic processes to address outside employment requests so that the extensive manual data input by Commission staff is avoided, and has been making recommendations to County management to this effect for years. The Ethics Commission made a specific request in its FY 13 budget for funding for this purpose, but the request was not funded.¹ Nonetheless, Ethics Commission staff has been working with DTS to try to streamline processes.

A high percentage of the outside employment requests are attributable to the police department. Because of the authorizations and rule sets that have been extended to police department employees, a separate and more complicated outside employment form is submitted for police department employees. The existence of this special form, and the special rule sets for police department approvals results in a substantial administrative and processing burden on Ethics Commission staff. Moreover, to try to create an electronic form for the police department creates a level of complexity that is substantially greater than the standard outside employment form for employees other than police department employees.

¹ However, requested funding for electronic lobbying disclosure is funded in the FY13 proposed budget.

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In the context of the Inspector General recommendation for the Ethics Commission to “implement the procedural and/or systemic changes necessary”, the Ethics Commission recognizes the value of this recommendation and looks forward to implementing it as time and resources permit. We note that the Inspector General does not identify any inefficiency in Ethics Commission operations or misapplication of Ethics Commission resources.

Until sufficient resources are dedicated to the Ethics Commission that match requirements imposed by law, the Ethics Commission will not be able to fulfill its programmatic and other responsibilities consistent with law and sound management practice.

Recommendation 7-a: Document Procedures in a Manual

We recommend that the Ethics Commission document procedures that describe the automated and manual procedures the current program specialist and staff director/chief counsel monitor or personally perform. The descriptions should be in sufficient detail to permit another person's understanding and performance of the steps therein.

The Ethics Commission concurs that procedure manuals are necessary for the sustainable operation of the Ethics Commission's programs. Prior to July 2010 when the complement of Ethics Commission staff included a program specialist II, there were procedure manuals for various operations of the Ethics Commission. For example, there were detailed instructions for the operations of the Lobbying Disclosure program and the processing of registration fees. Upon the departure of the program specialist II and the assumption of all program responsibilities handled by that employee by the program specialist I who was already handling all of the responsibilities associated with the financial disclosure system that is the primary subject of the Inspector General's report, there was a departure from the written procedures pursuant to which the lobbying disclosure program was being operated.

The Ethics Commission recognizes the value of this recommendation and looks forward to implementing it as time and resources permit.

Recommendation 7-b: Evaluate and Modify Staffing Workload

We recommend that the Ethics Commission streamline or eliminate procedures where feasible. The Ethics Commission should pursue increased use of automation in the Financial Disclosure, Lobbyist Registration, and Outside Employment Approval Request activities.

The Ethics Commission recognizes the value of this recommendation and looks forward to implementing it as time and resources permit. With respect to the specific references in this Recommendation to increased use of automation, please see the discussion of the actions we are taking in this regard, infra.

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OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

April 2, 2012

TO: Edward Blansitt, Inspector General

FROM: *for* Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: Final Draft Report, *Review of Certain Montgomery County Ethics Activities*

I am in receipt of your memo and draft report dated March 14, 2012 detailing the audit conducted by your office concerning the management of the County's Ethics Law with respect to the timely filing of Financial Disclosure Forms. We agree that adherence to the provisions of the Ethics Law is important and plays a key role in assuring our residents of a responsible and accountable County Government. My office will work with the stakeholders in other branches of government to improve the process and administration of the Ethics Law and related policies.

Before providing specific responses to your report's findings and recommendations, I would like to clarify the following points:

- The draft report does not acknowledge the fact that, as requested by the Ethics Commission, the ownership and total functional responsibility of the online Financial Disclosure System (FDS), currently handled by a staff to the Ethics Commission, is in the process of being transferred to the Executive Branch, Office of Human Resources. Currently, we are in the process of finalizing the recruitment package for hiring a new position in OHR to handle this task. This new position that hopefully will be filled within next six weeks is included in the County Executive's FY13 proposed operating budget submission to County Council.
- In reference to the Ethics Commission's training activities on County ethics law, the draft report refers to a 6% reduction (85 to 80) from FY10 to FY11. According to our records, for the past 25 years, all the trainings on ethics law for County officials, employees and Boards, Committees and Commissions were provided by the County Attorney's Office. Our understanding is that the Ethics Commission staff provides educational support on the actual functional use of the online system and responded to various questions over the phone.

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Our specific responses to the findings and recommendations can be found below:

IG Finding 1 - Financial Disclosure Business Process Ownership: In general, our test results show widespread late filing and frequent non-filing of the financial disclosure reports the Public Ethics Law requires of employees, and board and commission members. Yet, there is no overarching entity within Montgomery County Government that has the authority, accountability, and control necessary to ensure that the financial disclosure reporting process operates as anticipated by the Public Ethics Law.

CAO Response to Finding 1- As stated in the finding, the decentralization and diffusion of responsibility and ownership of the business process is a large part of the problem. In the next few weeks, after the ownership and total functional responsibility of the online Financial Disclosure System is transferred to the Executive Branch, the Chief Administrative Officer will be the authority who is accountable for ensuring that the financial disclosure reporting process operates as anticipated by the Public Ethics Law.

IG Finding 2 - Initial Financial Disclosure: Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit an initial financial disclosure report by established deadlines. Public employees and officials routinely submit financial disclosure reports later than the required 15 days following start of employment in a new role with the County.

CAO Response to IG Finding 2: We are in full agreement with the Inspector General that systems and procedures can be enhanced to improve timeliness of initial financial disclosure filings. Please refer to CAO Response to IG Finding 1.

IG Recommendation 2-a: Reduce Employment Notification Timeframes.

We recommend that the Office of Human Resources implement procedural changes designed to eliminate the delays that prevent the Ethics Commission from providing FDS access to employees on their start dates.

CAO Response to IG Recommendation 2-a: Please refer to CAO Response to IG Findings 1 and 2.

IG Recommendation 2-b: Enhance ERP/FDS Interface Design. To strengthen internal controls and reduce the workload of the Ethics Commission program specialist, we recommend the Department of Technology Services, in coordination with the Office of Human Resources and the Ethics Commission, address the design anomaly and enhance the ERP/FDS interface software to cause the FDS interface to only transmit HCM changes that relate to a relevant FDS filing status.

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CAO Response to IG Recommendation 2-b: Please refer to CAO Response to IG Findings 1 and 2.

IG Recommendation 2-c: Address System Access Delays. We recommend that Department of Technology Services (DTS), in coordination with the Office of Human Resources (OHR) and the Ethics Commission Staff Director/Chief Counsel, modify the design of policies, procedures, and systems to enable initial filers to timely access the FDS and comply with the 15 day filing requirement of the Public Ethics Law.

CAO Response to IG Recommendation 2-c: Please refer to CAO Response to IG Findings 1 and 2. In compliance with the County Ethics Law, we will ensure timely access to the FDS by all filers.

IG Finding 3 - Annual Financial Disclosure. Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit annual financial disclosure reports by the established deadline. Public employees and officials frequently do not submit annual financial disclosure reports by the April 15 (or extended) deadline required by the Public Ethics Law.

CAO Response to IG Finding 3: I do not agree with this statement. As indicated by the bulk of the Inspector General's draft report, policies and procedures are in place to require filing, both on an annual basis, as well as during the beginning and end of County employment. In our opinion, the issue is not the lack of policies, but the timely adherence to them. Please refer to CAO Response to Findings 1 and 2. In compliance with the County Ethics Law, we will ensure timely access to the FDS by all filers.

IG Recommendation 3-a: Review and Streamline the Annual Reporting Processes. We recommend that the Chief Administrative Officer modify the procedures and shorten the reconfirmation process timeframe to annually identify and approve the individuals subject to financial disclosure. These changes should be designed to effect the Executive and Legislative branch and Boards, Committees and Commissions compliance with the annual financial disclosure requirements of the Public Ethics Law.

CAO Response to IG Recommendation 3-a: We agree with the Inspector General's recommendation that the annual procedures for identifying financial disclosure filers should be shortened. The current process is cumbersome and should be streamlined.

The annual process for identifying individuals who must file a financial disclosure statement begins in the fall by asking departments to review the list of positions whose incumbents should file a financial disclosure statement in light of the criteria set out in §19A-17(c). After the departments respond, a proposed method (2) regulation is generally advertised in the November

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Register. The proposed regulation is then sent to the Council for approval in mid-January, just as the Council returns from its winter recess. The regulation is reviewed by the Government Operations (GO) Committee and the Council approval is typically given by mid-February. The Executive's proposed updates to the annual regulation typically reflect the routine creation and abolition of positions in the covered job classes over the previous year and the Council has assented to these updates without comment. This is a full 30 days after the January 15th deadline for the Chief Administrative Officer to submit a list of filers to the Ethics Commission (COMAR § 19A.17.01.02). As a result of this lengthy process (as the Inspector General notes), the statutory April 15th deadline for filing financial disclosure statements is routinely extended by the Ethics Commission (§ 19A-18 (a) (1)).

We recommend two changes to the current process:

- 1) The requirement that the County Executive must identify individuals who must file financial disclosure statements by method (2) regulation should be altered to identification of filers by method (3) regulation. This process would eliminate the 30 days at the back end of the process requiring Council review and approve the list of executive branch filers. This change would require an amendment to § 19A-17 (a) (4) and (b) (6). The Council's approval of the regulation identifying filers has become routine, and a change to a method (3) regulation should not be controversial.
- 2) There is no need for the list of filers to be sent to the Ethics Commission, since the notification to filers by the automated filing system does not (nor should it) require Commission action.

IG Recommendation 3-b: Formalize and Document Deadline Extension.

We recommend that any extension of the financial disclosure filing deadline be granted only by the Ethics Commission, that such extension be subject to documented deliberation as to cause, reason, and benefit, and that the Commission's review and approval be recorded in the Ethics Commission's Minutes.

CAO Response to IG Recommendation 3-b: We disagree with the recommendation that the ability to extend the filing deadlines should rest with the Ethics Commission. We agree that extensions of the filing deadlines should only be granted for the reasons provided in § 19A-6(a)(5), but believe that the County Executive/Chief Administrative Officer are better situated to make this determination if they are going to assume responsibility for the financial disclosure filing system.

IG Recommendation 3-c: Develop and Enforce Policies about Delinquent Filers.

We recommend that the Chief Administrative Officer, in coordination with the Ethics Commission, develop and distribute written policies as to the handling of delinquent filers and non-filers of financial disclosures. These policies should address annual and change of employment status filings.

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CAO Response to IG Recommendation 3-c: We agree with this recommendation and will work collaboratively with the Ethics Commission to craft realistic and workable policies to discourage filing delinquencies.

IG Finding 4 - Final Financial Disclosure. Policies, procedures, and systems have not been implemented in Montgomery County to ensure that individuals identified under the Montgomery County Public Ethics Law submit final financial disclosure reports by established deadlines. Public employees and officials routinely did not submit financial disclosure reports by the date of separation from service with the County. Provisions of the Public Ethics Law that address remedial actions and penalties for non-compliance are not enforced.

CAO Response to IG Finding 4. Please refer to CAO Response to IG Finding 3.

IG Recommendation 4: Enforce or Modify the Penalty Language of the Public Ethics Law. We recommend either enforcement of the law that requires final pay be withheld from individuals who have not filed a final disclosure, or, alternatively, the Ethics Commission propose legislative changes to the County Code that would establish a filing deadline and non-compliance penalty provision that can be enforced.

CAO Response to IG Recommendation 4: We agree with this recommendation and will seek to determine how best to enforce the requirement that covered employees terminating County employment have their pay withheld if they do not file a final disclosure. The Executive Branch, with input from the Ethics Commission, will also review other potential workable options to enforce compliance with the requirement.

IG Finding 5: FDS Software Modification. We recommend that DTS conduct a requirements and capability analysis of FDS notifications and tracking. Based on the results of that review, DTS could modify the FDS to enable better compliance with the financial disclosure ethics laws. Such modification should also include the development of an alternative, manually completed disclosure report that can be used as a permanent fail-safe back up to the automated disclosure system. The FDS could better support the Public Ethics Law by more actively prompting financial disclosure filers and reviewing managers to timely meet their obligations.

CAO Response to IG Finding 5: We agree that the current FDS system needs to be improved and that systematic notifications, reminders and management tracking functions should be developed to help ensure filers meet deadlines and enable management to have better insight into filing status and delinquent filers. Please refer to CAO Response to IG Findings 1 and 2.

In the recent weeks, with the Ethics Commission's consent, we have already created new compliance tracking reports to give management a better view of outstanding filings. We will

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continue to improve automation of follow-up notifications to filers and the managers who are responsible for review and approval of those filings.

IG Finding 6 - Outside Employment Activities. Delays in the manual, paper-based Outside Employment Approval Request process followed by the Ethics Commission increases the risk of an individual engaging in outside employment activities that are not allowed under the Public Ethics Law.

CAO Response to IG Finding 6: This is a matter within the purview of the Ethics Commission.

IG Recommendation 6: Revise Outside Employment Approval Practices.

We recommend that the Ethics Commission implement the procedural and/or systemic changes necessary to meet the Outside Employment Approval responsibilities delegated to it in the Public Ethics Law.

CAO Response to IG Recommendation 6: This is a matter within the purview of the Ethics Commission.

IG Finding 7 - Continuity of Operations. The limited deployment of computer-based systems and the Ethics Commission's reliance upon manual processes contributes to delays and backlogs in the completion of assigned tasks. The absence of written procedures subjects the County's ethics activities to an undue risk in the continuity of operations in the absence or departure of its staff.

CAO Response to IG Finding 7: This is a matter within the purview of the Ethics Commission.

IG Recommendation 7-a: Document Procedures in a Manual. We recommend that the Ethics Commission document procedures that describe the automated and manual procedures the current program specialist and staff director/chief counsel monitor or personally perform. The descriptions should be in sufficient detail to permit another person's understanding and performance of the steps therein.

CAO Response to IG Recommendation 7-a: This is a matter within the purview of the Ethics Commission.

IG Recommendation 7-b: Evaluate and Modify Staffing Workload. We recommend that the Ethics Commission streamline or eliminate procedures where feasible. The Ethics Commission should pursue increased use of automation in the Financial Disclosure, Lobbyist Registration, and Outside Employment Approval Request activities.

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CAO Response to IG Recommendation 7-b: This is a matter within the purview of the Ethics Commission.

If you have any questions, please feel free to contact me or Assistant Chief Administrative Officer Fariba Kassiri, who can be reached at (240) 777-2512 or Fariba.Kassiri@montgomerycountymd.gov.

TLF:ja

cc: Joseph Adler, Director, Office of Human Resources
Kathleen Boucher, Assistant Chief Administrative Officer
Robert Cobb, Chief Counsel, Ethics Commission
Marc Hansen, County Attorney, Office of the County Attorney
Fariba Kassiri, Assistant Chief Administrative Officer
Dieter Klinger, Acting Director, Department of Technology Services
Connie Latham, Special Assistant to the County Executive

Appendix C: Financial Disclosure System Filing Requirement Notifications: Current and Recommended

Montgomery County's Financial Disclosure System (FDS) provides notifications and status updates to individuals who are to submit a report as required by the Public Ethics Law. With the sole exception of annual disclosure reports, the FDS does not provide filers with reminder notifications of approaching or missed deadlines. Further, County managers who have been designated to review and approve financial disclosure reports do not receive notification about reports pending review, nor notices of missed filing deadlines. The FDS also fails to provide notices to higher level management or Ethics Commission staff about delays and backlogs that are accumulating within the disclosure process.

The following chart summarizes filing notifications provided, not provided, and recommended.

Disclosure Reporting Notifications	Filer			Approving Manager			Next Level Management			Ethics Commission Staff		
	Y ¹	N ²	R ³	Y	N	R	Y	N	R	Y	N	R
1. Announcement prior to annual reporting disclosure season ⁴	X			X			X			X		
2. Notification to filer re: requirement to complete disclosure	X				X	X	X			X		
3. 1st reminder notification to filer		X ⁵	X		X		X			X		
4. Subsequent reminder notifications to filer		X ⁵	X		X	X	X			X		
5. Acknowledgement of filer report submission	X				X		X			X		
6. Notification to manager re: reports ready for approval		X			X	X	X			X		
7. 1st reminder notification to approving manager		X			X	X	X			X		
8. Subsequent reminder notifications to manager		X			X	X	X	X ^{6,7}		X	X ⁷	
9. Acknowledgement of manager's approval of report	X				X	X	X	X ^{6,7}		X		
10. Notification to Commission re: reports ready for approval		X			X		X			X	X ⁷	
11. Acknowledgement of Commission's acceptance of report	X				X	X	X	X ⁸		X		

Notes:

1. **Yes:** Such notification is currently provided
2. **No:** Such notification is not currently provided
3. **Recommended:** Such notification should be provided
4. Announcements apply to annual reporting only
5. Filers currently receive reminders regarding Annual financial disclosure reports only
6. Manager to whom approving manager reports
7. A single, omnibus notification regarding the existence of one or more pending reports is suggested
8. Ethics Commission Chairperson and County's Chief Administrative Officer

Appendix D: Persons Required to File Financial Disclosure Reports

Sec. 19A-17. Who must file a financial disclosure statement.⁴⁵

- (a) The following persons must file a public financial disclosure statement under oath:
 - (1) each incumbent and candidate for:
 - (A) County Executive; and
 - (B) County Council;
 - (2) the following public employees:
 - (A) Chief Administrative Officer and any Deputy Chief Administrative Officer;
 - (B) special assistants to the County Executive;
 - (C) director and deputy director of each department, principal office, and office in the County government;
 - (D) members of the County Board of Appeals;
 - (E) members of the Commission; and
 - (F) members of the Merit System Protection Board;
 - (3) any person who is appointed to serve in an acting capacity in any position listed in the preceding paragraphs while the position is vacant;
 - (4) any other public employee in the Executive branch, or in the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, including any person listed in subsection (b), who the County Executive designates by regulation issued under method (2) after finding that filing a public financial disclosure statement will promote trust and confidence in County government;
 - (5) any other public employee in the legislative branch including the County Board of Appeals, and in the Merit System Protection Board, including any person listed in subsection (b), who the Council designates by resolution after finding that filing a public financial disclosure statement will promote trust and confidence in County government; and
 - (6) the members of a board, commission, committee, or similar body in the Executive branch, or of the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, which the County Executive designates by regulation issued under Method (2) or any public employee in the legislative branch, including the County Board of Appeals, and in the Merit System Protection Board, who the Council designates by resolution, after finding that filing a limited public financial disclosure statement will promote trust and confidence in County government. The financial disclosure required under this paragraph must be limited to information concerning any economic interest or gift that may create a conflict between the employee or member's personal interests and official duties. The Commission must adopt a regulation specifying the information that must be disclosed. A public employee who files a limited public financial disclosure statement under this

⁴⁵ Montgomery County Code, Part II, Chapter 19-A, § 17.

paragraph must also file a confidential financial disclosure statement if required to do so under subsection (b). A public employee need not file a limited public financial disclosure statement under this paragraph if the employee already is required to file a public financial disclosure statement.

- (b) The following persons must file a confidential financial disclosure statement under oath:
 - (1) Assistant Chief Administrative Officers;
 - (2) attorneys in the Office of the County Attorney;
 - (3) Hearing Examiners;
 - (4) Members of the Fire and Emergency Services Commission;
 - (5) paid members of any board, commission, committee, or authority of County government, including members of the Board of License Commissioners, the Revenue Authority, and the Housing Opportunities Commission;
 - (6) any public employee in the Executive branch, or in the Revenue Authority, Board of License Commissioners, or Housing Opportunities Commission, who the County Executive designates by regulation issued under method (2) after finding that filing a confidential financial disclosure statement will promote trust and confidence in County government; and
 - (7) any public employee in the legislative branch including the County Board of Appeals, and in the Merit System Protection Board, who the Council designates by resolution after finding that filing a confidential financial disclosure statement will promote trust and confidence in County government.
- (c) In designating public employees to file public or confidential financial disclosure statements under subsection (a)(4) or (b)(6), the Executive should include those employees who have substantial responsibility for one or more of the following functions:
 - (1) contracting or procurement;
 - (2) administering grants or subsidies;
 - (3) land use, planning and zoning;
 - (4) regulating, licensing or inspecting any business;
 - (5) other decisions with significant economic impact;
 - (6) law enforcement; and
 - (7) controlling access to confidential information.
- (d) The Executive and Council, respectively, must annually review the list of employees designated under subsections (a)(4), (a)(5), (a)(6), (b)(7), and (b)(8) for compliance with the purposes of this Article.

Appendix E: Test Results - (Page 1 of 3)

The following results are reported as of January 17, 2012, the date we conducted our final test of the financial disclosure data.

Annual Review and Determination of Filers. We reviewed the dates that the Annual Disclosure notifications were generated in the past five years.

In three years, 2011, 2010, and 2008, notifications were delivered to filers so late in the cycle that the filing deadline had to be extended by 15 to 30 days.

Initial Filings.

Ethics Commission Audit
Calculation of Initial Filing Status

Total Number of Initial Disclosures	I. Have Submitted Initial Filing			II. Have not completed initial filing			III. Dates of hire suggest transfer to reporting position.			IV. Individual Unknown to OHR and BCC		
	29	41%		14	20%		20	29%		7	10%	
Initial Financial Disclosure was Filed:	Count	% of Group	% of All	Count	% of Group	% of All	Count	% of Group	% of All	Count	% of Group	% of All
within 15 days of hire	6	21%	9%	0	0%	0%	Transfer date unknown			Hire date unknown		
more than 15 days after hire	23	79%	33%	0	0%	0%	Transfer date unknown			Hire date unknown		
has not yet been filed	0	0%	0%	14	100%	20%	3	15%	4%	0	0%	0%
within 15 days of notification	23	79%	33%	0	0%	0%	12	60%	17%	5	71%	7%
more than 15 days after notification	6	21%	9%	0	0%	0%	5	25%	7%	2	29%	3%
Average number of days:	Median											
delinquent from hire	63			133								
delinquent from hire - I & II	90	62										
delinquent from notification	61			55			56			9		
delinquent from notification - I, II, III, & IV	51											
between hire & notification	44			106								
between hire & notification - I & II	64	47										
Total Count Initial Disclosures	Count	% of All										
Requested	70											
Filed by 1/17/12	53	76%										
Not filed by 1/17/12	17	24%										
Filed within 15 days - I & II	6	14%										
Not filed within 15 days - I & II	37	86%										

Notes:

For persons not filing, the date of the test data, January 17, 2012, was used to calculate number of days delinquent.

Person who have had an initial financial disclosure submission returned for correction were counted as having not completed a filing

For persons in suggested transfer category, the date of hire reported by the Office of Human Resources was for individual's first date of service with the County, not for the current position subject to disclosure filings.

No hire date could be ascertained for these Individuals from either the Office of Human Resources (OHR) or the office of Boards, Commissions and Committees (BCC)

Data as of January 17, 2012

Appendix E: Test Results - (Page 2 of 3)

Annual Filings.

Ethics Commission Audit

Calculation of Annual Filing Status¹

		Disclosure process completed.				Disclosure Process Open			
		Accepted ² 1,574		Submitted ² 9		Returned ⁴ 26		Filing ⁵ 5	
Deadline		Before Deadline	After Deadline	Before Deadline	After Deadline	Before Deadline	After Deadline	Before Deadline	After Deadline
15-May-11		1,106	468 1,574	0	9 9	10	16 26	0	5 5
		Complete		Open				Required⁶ 32	
Before 5/15		1,106	67%	10				0	32
After 5/15		477	29%	53 1,646	63	4%			32
Total				1,646					

1. As of January 17, 2012 with Notification request dated 15 April 2011

2. Filing is completed and accepted by the Ethics Commission. Completed.

3. Filer has completed, but approving manager has not yet signed off. Completed.

4. Filer made initial submission; disclosure returned for error correction. Still open

5. Filer has started to complete the disclosure, but has not yet submitted it to approving Manager. Open.

6. Filer has been requested to file disclosure, but has not started the process. Still open.

Final Filings: 112 final disclosure reports were filed through the FDS for 2010 and 2011.

We sampled 10 of these and found that 30% were submitted after the last day of employment – the statutory deadline for filing. These filings averaged 53.3 days delinquent, with the longest delinquency being 124 days.

Appendix E: Test Results - (Page 3 of 3)

Filing Records by Governmental Entity:

Initial Financial Disclosures	<u>Agencies*</u>	<u>BCC*</u>	<u>Council</u>	<u>Executive</u>
Total Disclosures	7	17	8	38
Disclosures Submitted by Deadline				
Count	5	5	0	10
Percent	71%	29%	0%	26%
Disclosures Submitted After Deadline				
Count	2	6	7	15
Percent	29%	35%	88%	39%
Average Days Delinquent¹	8	20	18	89
Median Days Delinquent¹	8	20	14	70
Disclosures Outstanding (as of January 17, 2012)				
Count	0	6	1	13
Percent	0%	35%	13%	34%

Annual Financial Disclosures	<u>Agencies*</u>	<u>BCC*</u>	<u>Council</u>	<u>Executive</u>
Total Disclosures	129	141	56	1,320
Disclosures Submitted by Deadline				
Count	78	64	38	929
Percent	60%	45%	68%	70%
Disclosures Submitted After Deadline				
Count	44	61	18	351
Percent	34%	43%	32%	27%
Average Days Delinquent⁴	13	53	11	11
Median Days Delinquent⁴	13	4	2	2
Disclosures Outstanding (as of January 17, 2012)				
Count	7	16	0	40
Percent	5%	11%	0%	3%

Notes:

* Independent Governmental Agencies; Boards, Commissions, and Committees

1 From 15 days past hire date

2 For Agencies: Appointment Date Unknown. For All Others: Transfer Date Unknown

3 From 15 days past date of notification

4 From established deadline date.

Data as of January 17, 2012